

CRIMINAL APPEAL NO. 1398 OF 1986.

Date of decision: 22.2.1996.

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. Nigam Shukla, A.P.P. for appellant-State.

Mr. P.B. Bhatt, advocate for respondent-accused.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: R.R.Jain, J.

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February 22, 1996.

Oral judgment:

Aggrieved by the order of acquittal passed by learned Judicial Magistrate, First Class, Nadiad, in Criminal Case No.3995 of 1984, the State has preferred this appeal.

The accused/respondent was charged for commission of offence under Section 324 of the Indian Penal Code for having injured the complainant - Kailashchandra

Pravinbhai - by giving three successive blows with knife. As a cardinal rule, in a criminal trial, case of prosecution must always get corroboration from independent witness as well as medical evidence. This is a case wherein only the complainant has been examined and case has been disposed of. The complainant has been examined at Ex.9 and the original complaint has been produced at Ex.10.

Mr. P.B. Bhatt, learned advocate for the respondent/accused, has invited my attention to material discrepancies. The discrepancies shown go to the very root of the merits of the case and, therefore, are material and unless those discrepancies are satisfactorily explained or rendered immaterial through evidence of independent witness, the complainant cannot be relied upon. In light of discrepancies the only inference which can be drawn is that the complainant is not telling truth and if the complainant is not telling truth, then his evidence cannot be the sole basis for conviction.

I entirely agree with submissions of learned A.P.P. Mr. Shukla that there is no jacket-type formula which lays down that in every matter the case of the prosecution should get corroboration from independent witnesses. According to the recent trend of judicial pronouncements, the injured witness is the best witness as he can be termed as stamped witness whose presence admits of no doubt and being himself the victim would not leave out the real culprit and substitute innocent person. On this point, Mr. Nigam Shukla, learned A.P.P. has placed reliance upon the observations made by the Supreme Court in the case of Bonkya v. State of Maharashtra, reported in 1995 (6) SCC 447. It is true that evidence of an injured witness is of great significance but such evidence should again be reliable and trustworthy. As discussed above, in this case I find lot of discrepancies between the contents of FIR Ex.10 and the oral testimony of the complainant at Ex.9. The inconsistencies adversely shake reliability and it should be hazardous to place reliance and play with somebody's liberty. Mr. Shukla has not been able to point out any error or infirmity committed by the learned trial Judge while appreciating the evidence.

From the complaint, Ex.10, it clearly transpires that so many independent witnesses were present and, therefore, possibility of securing independent witness was available yet for the reasons best known to the prosecution has not examined any independent witness and, therefore, the

investigation as well as the case of prosecution also does not inspire any confidence.

As per prosecution case, the complainant was injured as the accused inflicted three successive blows. In such a matter, the accused has to be connected with possession of weapon and subsequently recovery thereof. I do not find any independent evidence on record which can in any way connect the accused with possession of weapon as alleged.

As argued by Mr. Shukla, learned A.P.P., it is true that the learned trial Judge had done some haste at the cost of parting justice which ordinarily one should not have done and the same is not approved of. However, I do not find any infirmity or error in appreciation of facts or law for delivering the impugned judgment. In this view of fact, the appeal is devoid of merits and deserves to be dismissed.

In the result, the appeal is dismissed. Judgment and order of trial Court is confirmed.